

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JOHNNIE B. JANES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:12-cv-0931 CW-PMW

District Judge Clark Waddoups

Magistrate Judge Paul M. Warner

This case was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Paul M. Warner under 28 U.S.C. § 636(b)(1)(B). On January 15, 2013, Judge Warner issued a Report and Recommendation, recommending that the case be dismissed for lack of subject-matter jurisdiction. Plaintiff Johnnie B. Janes filed an Objection to the Report and Recommendation on January 29, 2013. Accordingly, the court has reviewed the record *de novo*.

Mr. Janes asserts a claim under the Federal Tort Claims Act. After exhausting his administrative remedies, Mr. Janes was advised he could file his tort claim in federal district court, but the claim had to be filed within six months. Mr. Janes complied with the six month requirement, but filed his claim in state court rather than federal court. It is apparent from the title page of his pleadings and the body of the text that he thought he was filing his claim in federal court. This was an unfortunate mistake to which the court is sympathetic.

Despite the court's sympathies for Mr. Janes' situation, it lacks the power to remedy the situation for the reasons stated in Judge Warner's report. The court therefore APPROVES AND

ADOPTS Judge Warner's Report and Recommendation in its entirety.¹ Each party shall bear one's own costs.

SO ORDERED this 11th day of February, 2013.

BY THE COURT:



Clark Waddoups
United States District Judge

¹ Dkt. No. 10.